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Citizens for Juvenile Justice

CHINS Report Card: The Unfinished Agenda

A Progress Report on the Implementation of Reform Recommendations

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Citizens for Juvenile Justice is a statewide membership organization of juvenile justice professionals and organizations. Our mission is to strengthen the juvenile justice system by convening diverse groups and individuals to educate the public about juvenile justice. We advocate for policies that ensure the public safety by supporting families and communities through the rehabilitation of youth.

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The Boston Bar Association Task Force on Children In Need of Services: Report on Truancy;

Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children;

In Trouble: Children and Families in Need of Services

Final Report of the Special Legislative Commission on Children in Need of Services;

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CHINS REPORT CARD: THE UNFINISHED AGENDA

WHAT ARE CHINS AND WHO ARE CHINS YOUTH?		**2**
PART I.	**CHINS REPORT CARD**	**4**
	REPORT OF THE GOVERNOR'S/MASSACHUSETTS BAR ASSOCIATION'S COMMISSION (1987)	**5**
	SPECIAL LEGISLATIVE COMMISSION ON CHILDREN IN NEED OF SERVICES (1989)	**7**
	SUPREME JUDICIAL COURT COMMISSION ON JUVENILE JUSTICE (1994)	**9**
	THE BOSTON BAR ASSOCIATION TASK FORCE ON CHILDREN IN NEED OF SERVICES (1998)	**10**
PART II.	**THE UNFINISHED AGENDA**	**14**
	SYSTEM ACCOUNTABILITY	**14**
	YOUTH ACCOUNTABILITY	**17**
	PARENTAL ACCOUNTABILITY	**19**
	BOSTON	**20**
	CONCLUSION	**20**
PART III.	**SOURCES AND FOOTNOTES**	**21**

What are CHINS and who are CHINS youth?

In 1973, the Commonwealth of Massachusetts decriminalized four distinct juvenile behaviors: runaway, truant, stubborn child and school discipline problem. The Commonwealth also established a new non-delinquent system to address these troubled behaviors called CHINS or "child in need of services." The fundamental principle behind the statutory shift was the belief that CHINS behaviors were not offenses against society, but rather behaviors against a youth's own self interest.

Prior to 1973, runaway, truant, stubborn and school discipline problem youth were considered delinquent and subject to the same remedial and public safety consequences as delinquent youth, such as commitment to a reform school or institution.

Parents, legal guardians, Supervisors of Attendance and police were empowered under the 1973 law to petition the court for *services* for a child in need of services. As a result, the use of the CHINS statute grew rapidly. In 1999, nine thousand, one hundred and ninety (9,190) CHINS petitions were filed.

Congress joined Massachusetts in 1974 by approving decriminalization nationwide through the Juvenile Justice and Delinquency Prevention (JJDP) Act. The federal Act also provided funds and encouraged states to provide services for youth committing CHINS behaviors. The JJDP Act linked eligibility for juvenile justice dollars to the success of a state's efforts to decriminalize CHINS behaviors and deinstitutionalize CHINS youth.

Consequently, the Commonwealth's approach to these behaviors shifted from a criminal punitive reaction (delinquency) to a *service delivery system* (CHINS) resulting in the shared responsibility for CHINS behavior between the youth and adult society. Specifically, society assumed the responsibility of assisting the youth by providing services in an attempt to cease CHINS behavior. The intent was to improve the lives of CHINS youth in the immediate future, deter them from opportunities for delinquency and allow them to lead productive lives as adults.

CHINS Behaviors Recognized by Law

- Runaway - child below the age of 17 who persistently runs away from home.
- Stubborn Child - a child below the age of 17 who fails to obey the reasonable commands of his/her parents.
- Truant - a child between the ages 6 and 16 who persistently and willfully fails to attend school.
- School Offender - a child between the ages 6 and 16 who persistently violates the lawful and reasonable regulations of his/her school.

Source: MGL Chapter 119, Section 39E through 39I.

Unfortunately, youth, parents and government officials struggle daily with the practical workings of the CHINS statute. The frequent result is delinquency or adult criminal behavior.

The Commissioner of Probation's study *In Jeopardy and At Risk: CHINS Cases in Massachusetts* (November 1998) serves as the basis for any factual discussion of who CHINS youth are and their risk for prior and subsequent delinquency. In fact, the Probation Department is the obvious agency to conduct a CHINS study in Massachusetts, since the Supreme Judicial Court learned that "the majority of [CHINS] cases, some 75%, are diverted to informal probation."

The landmark report, which tracked all 1994 CHINS cases (6,548 cases) found that fifty-four percent

(54.3%) of all CHINS youth were arraigned for adult criminal offenses or delinquent offenses within three years of their first CHINS petition. Overall, twenty-three percent (23.8%) of CHINS youth had an arraignment before their first CHINS petition. Consequently, CHINS youth are more than twice as likely to be arraigned *after* their first CHINS petition than before (23.8% prior, 54.3% subsequent).[1]

Only 46% of CHINS youth did not appear for arraignment in juvenile or adult court in the preceding three years.

Clearly, CHINS is a failing system.

CHINS youth are divided almost equally between girls (49%) and boys (51%). Boys outpace girls in the stubborn, truant and school offender classifications, but girls account for nearly two of every three runaway petitions. Fifty-three percent (53%) of all CHINS cases are 14- and 15-year-olds. Most subsequent CHINS petitions address repeat behavior, except for school offenders who are more likely to have a subsequent stubborn child CHINS petition.

The Probation Commissioner also found that "an overwhelming 68.2% of the boys will come back before the juvenile or district court for an arraignment" [emphasis not added] suggesting a statistical gender gap. However, a still unacceptable forty percent (40%) of girls are subsequently arraigned.

As the CHINS statute nears its 30th year, Citizens for Juvenile Justice questions the ability of the current framework to support youth and families, reduce subsequent CHINS petitions, and protect the public safety.

Four separate commissions have offered recommendations to reshape CHINS policy in Massachusetts. A review of these efforts, noting policy accomplishments and identifying areas of improvement, is the primary objective of Part I: *CHINS Report Card*. Reducing the percent of CHINS youth who are subsequently arraigned to zero may not be possible, but adult society, at the first, holds an obligation to do better.

Number and Type of CHINS in Massachusetts
% Prior Delinquency and % Subsequent Arraignment

1994 data, subsequent arraignment data based on three years of case tracking

Type of CHINS	Number	Percent	% Prior Delinquency	% Subsequent Arraignment
Runaway	2750	39.7	24.6	53.9
Stubborn	1977	28.5	24.1	58.7
Truant	1870	27	20.5	47.1
School	332	4.8	33.4	72.3
TOTAL	6929	100	23.8	54.3

Source: Office of the Commissioner of Probation.

The CHINS Process:

Informal Probation and Trial on the Merits

The CHINS statute allows for two distinct avenues to address CHINS behavior: informal probation or a trial on the merits of the petition. A preliminary hearing will be heid to determine the course of the case. However, a probation officer may conduct an investigation prior to the preliminary hearing to determine what is in the best interest of the child.

Typically, the preliminary hearing determines that informal probation would best serve the youth. Indeed, the Supreme Judicial Court's Commission on juvenile justice in 1994 "learned that the majority of cases, some 75%, are diverted to informal probation."

The purpose of informal probation, according to Chapter 119, Section 39E, is to "resolve the situation which formed the basis of the application or petition and which will eliminate the need for a judicial trial on the merits."

During the informal phase a probation officer may suggest a wide, *but highly fragmented*, array of services. However, the youth and family may or may not choose to participate. Services that may be available to the youth and family (psychiatric, psychological, educational, occupational, medical, recreational, social, mediation) vary widely among court jurisdictions, and the probation officer with the cooperation of the court "must ascertain whether such services [and funding] are available."

Only infrequently does a petition for CHINS ever proceed to trial. "In the majority of cases, there is no hearing and no adjudication; children are usually referred to the probation officer for informal assistance."

Often a delinquency charge, a Care and Protection petition (abuse and neglect) or the advancing age of the youth supercede a full trial on the merits.

If a trial on the merits occurs and the youth is found "in need of services," the court may direct similar services as provided during the informal probation phase or place the child in the care of a relative, a probation officer or a charitable organization and within limitations to a state agency.

Primary Source: Massachusetts Juvenile Court Bench Book, Part II, CHINS. MCLE, 1998.

Part I.

CHINS Report Card

Citizens for Juvenile Justice provides the following *CHINS Report Card* as a chart of the Commonwealth's progress toward positive CHINS outcomes. Since 1987, four commissions have reviewed the operation of the CHINS statute and have offered general and specific recommendations for executive, legislative and judicial policy change. The recommendations vary widely, and several are contradictory, while others simply restate the opinion of a previous panel.

We find the ability of the three branches of government and the non-profit sector to adopt these recommendations, or some combination, an adequate measure of society's attempt to correct the identified shortcomings of the CHINS system.

The ratings used imply the accomplishment of a specific recommendation and *do not* reflect a Citizens for Juvenile Justice assessment of the recommendation as a proper public policy. Consequently, a panel recommendation may receive a positive rating notwithstanding our subsequent critique of the recommendation as an improper public policy. Analysis and opinion, to the best of our ability, is reserved for: Part II: *The Unfinished Agenda*.

The four reports examined include the 1987 Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Need of Children, the 1989 Special Legislative Commission on Children-in-Need-of-Services, the Final Report of the 1994 Supreme Judicial Court Commission on Juvenile Justice, and the 1998 Boston Bar Association Task Force on Children In Need of Services: Report on Truancy. The majority of the recommendations are reprinted as stated in the original reports; however, for the convenience of the reader, we

consolidated and reformatted a limited number of recommendations and provided a brief commission summary.

Lastly, the *CHINS Report Card* charts the progress of the *implementation* of reform recommendations. Limited success toward accomplishment should not reflect on the recommending panel.

Citizens for Juvenile Justice relied on a wide array of sources, *including the agency charged with initiating the suggested policy*, to determine specific ratings.

We established five ratings:

A. Outstanding for complete or nearly complete accomplishment of a commission recommendation.

B. Satisfactory for considerable achievement of a recommendation.

C. Needs Improvement for measurable progress with significant margin for additional achievement.

F. Failure.

N. Not Accomplished for recommendations that either by date or circumstances it would be unreasonable to hold the intended agency fully accountable. For instance the performance of an agency function may be contingent upon legislative action.

Report of the Governor's/Massachusetts Bar Association's Commission (1987)

Commission Summary

The Commission offered four specific CHINS recommendations as part of a larger report on the unmet legal needs of children, including three issues inherently linked with child poverty in Massachusetts: 1) state intervention in family life for the protection of the child, 2) efficiency and fairness of court functions, and 3) system resources and training. The Commission did not make detailed recommendations on the CHINS statute, because the Commission members represented "widely divergent views as to how extensively the courts should be involved in CHINS-type cases, if at all." The Commission acknowledged that the court can, in particular cases, "nudge" disinclined youth and families to successfully avail themselves of services. The Commission was co-chaired by the Honorable Sheila McGovern and S. Stephen Rosenfeld, Chief Legal Counsel to the Governor (1983-1987). The Massachusetts Bar Association underwrote the production of the report.

Specific Recommendations

#1: In the initial stages of proceedings involving CHINS, the court should consider, on the record, whether the child should be referred to the local educational agency for a Chapter 766 [special education] Team evaluation, if the facts indicate possible impairment of the child's ability to progress effectively in a regular education program. Parents or legal guardians - or children themselves if over 14 - should be parties to such consideration. In addition, the Office for Children should receive funds to support research and advocacy related to children's special education and other needs.

F. Failure. Special education evaluations are conducted by school districts only. The court may suggest

that a district conduct an evaluation but the Juvenile Court Bench Book makes clear that the discretion to conduct an evaluation rests with the school district, not the court.

Additionally, newly adopted Department of Education regulations effective September 1, 2000 eliminated truancy as a specific trigger for special education evaluations, according to 603 CMR 310. Equally important, even if truancy was a specific trigger for a special education evaluation, state law defines truancy as a "persistent" absence from school. The CHINS statute does not numerically define "persistent," and as such, each school district is allowed to define truancy on its own terms. The Office of Children was restructured in 1996 (now the Office for Child Care Services), and several of its functions were eliminated.

#2: The Chief Administrative Judge of the Trial Court should establish a committee to develop and promulgate uniform, comprehensive, written rules or standards for every Department of the Trial Court, including Probation, governing children in need of services.

B. Satisfactory. The Massachusetts Juvenile Court Bench Book, authored by leading juvenile court judges, provides the judiciary with step-by-step procedures for CHINS cases before the court. In 1990, the Probation Commissioner established standards in CHINS cases as directed by the Chief Administrative Justice.

#3: Mental health clinics should be established, under the aegis of the Department of Mental Health, for all courts in which child and family issues are heard.

B. Satisfactory. Under a 1999 interagency service agreement between the expanded Juvenile Court Department and the Department of Mental Health, juvenile court clinics function in each county, staffed by contracted agency vendors providing forensic mental health services. The bulk of the juvenile court clinic caseload involves CHINS and delinquent youth, although in some counties, such as Suffolk County, the clinics handle a significant number of Care and Protection (abuse and neglect) case referrals. The clinics respond to formal forensic questions from the court, such as competence to stand trial and offer evaluations that may include recommendations for services from a state agency or community-based resource.[2]

#4: Increased funding should be made available to encourage expanded use of mediation by the courts - particularly in CHINS cases - as an informal alternative for families willing to try mediation before resorting to litigation.

B. Satisfactory. The Supreme Judicial Court's Standing Committee on Dispute Resolution has approved nine CHINS mediation programs serving youth in the following counties: Barnstable, Berkshire, Bristol, Franklin, Hampshire, Hampden, Middlesex, Norfolk and Suffolk. However, Plymouth, Worcester and Essex counties do not have a CHINS mediation program according to the Standing Committee's 1999 report.

Special Legislative Commission on Children in Need of Services (1989)

Commission Summary

The commission identified four broad priorities for action: prevention and early intervention, court supervised diversion, public school reform and access to affordable services. The seven specific recommendations listed below are borrowed only from Chapter III: The Law and the Courts. The Commission also offered numerous recommendations related to schools and overall systemic responsibility beyond the scope of this document. The Commission was chaired by State Senator Salvatore Albano and State Representative Barbara Hildt.

Specific Recommendations

#1: Discontinue the practice of labeling children in need of services as "status offenders." Rather than identifying them as "pre-delinquent," "truants," "runaways," or "stubborn," (terms which unfairly evoke a subtle implication of guilt, criminality and punishment) the courts, schools and associated service providers should focus attention on resolving conflict and meeting the needs of the youth and his or her family.

B. Satisfactory. "Truant," "runaway" and "stubborn" are terms defined in the General Laws of the Commonwealth. The term "status offenders" has fallen considerably from common parlance. Regardless of the terminology, the courts, schools and associated service providers have made attempts to address the unmet needs of children in need of services. Many of these attempts are detailed in the *CHINS Report Card*.

#2: Provide access to affordable non-litigious conflict resolution, such as family mediation, and whenever possible, require the use of these services prior to the filing of an application for court intervention.

B. Satisfactory. The Supreme Judicial Court's Standing Committee on Dispute Resolution has approved nine CHINS mediation programs serving youth in the following counties: Barnstable, Berkshire, Bristol, Franklin, Hampshire, Hampden, Middlesex, Norfolk and Suffolk. However, Plymouth, Worcester and Essex counties do not have a CHINS mediation program according to the Standing Committee's 1999 report. *A similar recommendation was offered by the Massachusetts Bar Association.* *See above, page six.*

#3: The courts should continue to closely monitor cases when children are arrested for running away or when disputes arise between schools and agencies providing services to children and their families.

C. Needs Improvement. The Commission intended this recommendation to address the suspicion that "a significant portion of runaways may, in fact, be victims of long-standing unreported abuse and neglect." Suspicions of abuse and neglect are partially confirmed by the Probation Commissioner who found that "girls make up the greatest percent of runaways." The Commission also intended this recommendation to prompt the court to settle interagency disputes relative to the provision of services. Often these disputes revolve around cost sharing. The Office of Children, which oversaw cost sharing disputes among Executive Office of Health and Human Service agencies was restructured in 1996 (now the Office for Child Care Services), and several of its functions, including cost sharing dispute resolution, were eliminated.

#4: Require the development and implementation of a statewide social service needs assessment and guidelines governing procedures for the collection of reasonable fees

for services.

F. Failure. A unified CHINS social service needs assessment has not been developed. Such an assessment tool would require the cooperation of, at least, the Juvenile Court Department, the Department of Social Services, the Department of Mental Health, Probation and the health insurance industry.

#5: The Juvenile Court Department and the District Court Department should develop and implement standard judicial guidelines to govern procedures and standards employed in court-supervised interventions.

B. Satisfactory. The Commission presented this recommendation at the time when both the Juvenile Court and the District Court handled CHINS cases. As the Juvenile Court expanded statewide in the late 1990s, the volume of District Court CHINS cases declined dramatically. The nature of informal CHINS resolution and the specifics of each case almost assures an inconsistency of practice by court and by case. However, the Massachusetts Juvenile Court Bench Book does provide judges with step-by-step procedures for CHINS cases before the court.

#6: The Commonwealth should encourage and support the development and replication of court diversion programs for CHINS youth.

C. Needs improvement. CHINS diversion programs *vary* widely across the state. Some jurisdictions have little or no diversion, while some juvenile probation departments, like Fall River, New Bedford and Worcester, have developed programs.

#7: The Executive Office of Health and Human Services, in cooperation with the Department of Education, the courts, school committees, and human service advocates, should develop and implement a comprehensive plan for promoting specialized, coordinated, community-based services for troubled children and youth and their families, including parent education programs, family mediation services and family advocacy services.

C. Needs Improvement. A comprehensive plan of community-based services for CHINS youth and families does not exist. However, the family-based service initiative of the Department of Social Services, the newly implemented Day Reporting System of the Department of Youth Services and the Targeted Cities Program of the Executive Office of Health and Human Services do include various community-based coordinated services. At the time of the Commission, section 6A of chapter 28A of the General Laws authorized the Office of Children (OFC) to convene and enforce the child service decisions of Interagency Childrens' Service Teams. The OFC Commissioner was enabled by statute to require agency action (for example, cost sharing) in the absence of team consensus. In March of 1996, however, Interagency Teams were eliminated from the OFC enabling statute by the Massachusetts legislature.

Supreme Judicial Court Commission on Juvenile Justice (1994)

Commission Summary

The Commission was formed by order of the Supreme Judicial Court in March of 1992 and chaired by the Honorable Joseph Nolan. The CHINS subcommittee was co-chaired by Jane Tewksbury and the Honorable Luis Perez.

The Commission reached three main conclusions:

1. Repeal of the existing CHINS statute.
2. Pending repeal, develop a CHINS diversion program in all courts dealing with CHINS cases.
3. Strengthen the existing court procedures to include parents and involved agencies as legal parties, with the Department of Social Services serving as the state's petitioner.

Specific Recommendations

#1: Repeal the CHINS statute, because CHINS cases should be left to schools and child welfare organizations where more appropriate and effective remedies can be applied, unless a Care and Protection filing is warranted. Care and Protection, termination of parental rights, custody, adoption and delinquency cases all drain significant time and attention from limited resources of the respective court departments involved with child welfare cases.

N. Not accomplished. The legislature has taken no action on this item.

#2: Pending repeal, implement a diversion program for CHINS cases in each child welfare court. Prior to the issuance of a CHINS application, except where the child's location is unknown, the parties will be required to appear before the Diversion Program Screening Committee of the court of jurisdiction. The Screening Committee will assess and attempt to meet the service needs of youths and their families if the parties cannot first work out a private solution. Each case will be overseen by a court probation officer.[3] *A similar recommendation was offered by the Special Legislative Commission.* *See above, page eight.*

C. Needs improvement. CHINS diversion programs *vary* widely across the state. Some jurisdictions have little or no diversion, while some juvenile probation departments, like Fall River, New Bedford and Worcester have developed programs.

#3: Pending repeal of the CHINS statute, suggest legislative changes "to formalize and clarify the CHINS process. These recommended changes include eliminating the provision for informal assistance for certain status offenders." Informal assistance would be offered through the detailed diversion program model outlined in Recommendation #2.

F. Failure. The legislature has made few changes to the CHINS statute in recent years.[4]

The Boston Bar Association Task Force on Children In Need of Services: Report on Truancy (1998)

Task Force Summary

The Task Force was launched by the Boston Bar Association to investigate truancy ***in Boston only***: "...one of the most significant and intractable problems in our society today." The Task Force was chaired by Attorney Ronald Kessel of Palmer and Dodge, LLP.

The Task Force's recommendations "manifest two complementary but quite different basic philosophies and their related strategies. One is a simple behavioral approach that regards truancy as intolerable behavior and deals directly by taking the option of being a truant away. The second recognizes that educational and social services must be able to bring about more lasting and deep-rooted changes in lifestyle."

The Task Force also made two key points:

1. "Truancy is a form of habitual behavior that is best dealt with sooner rather than latter...hence, early intervention is a critical part of our recommendations."
2. "Truancy in Boston is not a pilot problem. It is a pervasive one, and pilot programs alone will never be the solution...We see no choice but to recommend some system-wide changes."

Specific Recommendations

#1: The Boston School Department should have, available through its computer information system, updated attendance records that track all excused and unexcused absences for all students in all schools. The attendance records should reflect consistently applied criteria for determining excused and unexcused absences.

B. Satisfactory. Starting in October 1998, all schools were given written guidelines to determine whether absences were excused or unexcused. According to the Attendance Improvement Initiative of the Boston Public Schools, data is consistently compiled from all schools.

#2: The Supervisors of Attendance should get truancy reports from the computer information system and not have to rely solely on the teachers and school staff to generate attendance cards.

C. Needs improvement. Since teachers and school staff are the original source of attendance data, Supervisors of Attendance will always be reliant on schools for the accuracy of attendance records. However, significant capital and training are necessary to improve computer retrieval of attendance data.

#3: The number of Supervisors of Attendance should be significantly increased and the follow-up roles expanded.

B. Satisfactory. Three additional Supervisors of Attendance have been hired, raising the total to eleven, one for each school cluster or one for every five thousand, six hundred and seventy-four (5,674) Boston Public School students as of June 30, 2000. A data entry clerk has been hired. *Effectiveness* of Supervisors of Attendance is discussed under Recommendation #14.

#4: The Boston Police, Boston School Police, MBTA Police and Boston Juvenile Court Probation Officers should be given by legislation the same authority as the Supervisors of Attendance to apprehend truants without warrants and take them to school.

C. Needs improvement. Only a Supervisor of Attendance can physically return a student to school under Massachusetts state law. Governor Paul Cellucci, State Senator Linda Melconian and State Representative Kevin

Honan offered legislation in the 1999-2000 legislative session to authorize police to apprehend truants. Representative Honan's bill (House 2496) specifically empowered Boston and MBTA police within the limits of the City of Boston. The Cellucci and Melconian bills granted the power to police statewide.[5]

All three bills were consolidated and rewritten by the Education, Arts and Humanities Committee, which approved police authority in school districts "identified with low average daily attendance" *subject to provisions of collective bargaining*. The Education Committee's bill was referred to Senate Ways and Means on June 21, 1999. No action has taken place since, directly affecting the implementation of Recommendation #5.

#5: The Boston Police, Boston School Police, MBTA Police and Boston Juvenile Court Probation Officers on a regular basis should conduct truancy sweeps throughout the City of Boston.

C. Needs Improvement. In practice, truancy sweeps, which were conducted in every police precinct in the 1999-2000 school year, return only a handful of truant students to the classroom or to a truancy center each year. Of the seven hundred and three (703) students stopped in truancy sweeps in the 1998-1999 school year by the City of Boston, only a handful, unofficially, not more than two dozen, were returned to school or a truancy center. In fact, the school department returns so few students to school as a result of truancy sweeps that the department does not tabulate the number returned to school.

Instead police and Supervisors of Attendance stop suspected truants and inquire as to their educational status. Officers collect data and forward the data to the school department. Truant youth are then allowed on their way.

The inability to return students to the classroom rests with the legislature's failure to empower police officers to do so. Only a Supervisor of Attendance can physically return a student to school under Massachusetts state law, as described in Recommendation #4.

#6: The Boston School Department should adopt a policy that requires all schools to keep apprehended truants and late arrivals at school.

C. Needs improvement. A city-wide policy does not exist. Each high school has its own policy for admitting tardy students. As described in Recommendation #5, few if any truants are ever returned to school.

#7: Truancy Centers could serve as alternate places to return truants.

C. Needs improvement. The Mo Vaughn Youth Program operated a pilot truancy center from January 1999 to June 1999, serving approximately 25 students from the Thompson and Lewenberg middle schools. The Mo Vaughn Youth Program reported significant academic improvement among the students served, especially when day school services were linked with after school programs. Two factors hindered further success: 1) limited funding and 2) school policy, which prohibits matriculation after reaching the maximum number of unexcused absences, notwithstanding academic progress achieved at the truancy center.

#8: Truants who are significantly below their classmates in academic performance should be given needs assessments, receive remedial help and be given appropriate class placements.

C. Needs improvement. The new Boston attendance policy requires that truant students are to be referred to the Student Support Team. The Student

Support Team may or may not conduct a special education evaluation. Student Support Teams do not receive computerized truancy reports linking the total number of unexcused absences and academic performance per student. Consequently, special education evaluations to determine the reasons for under achievement and school withdrawal are not managed as efficiently as possible.

#9: Truants in need of services should receive certain services through direct court referrals. The court and probation officers should be able to directly refer CHINS truants to program spaces dedicated to court referrals for academic remedial services, after-school counseling/ activities and parent education. The referrals would require additional funding.

F. Failure. The Boston Bar Association asserted that the inability to provide services is "not the result of an inherently flawed statutory scheme" but rather "a failure to fund and provide services." The additional funds requested would allow the court and probation officers to directly purchase CHINS services. Currently, the courts and Probation can only refer youth and families for service funded by private insurance or other state agencies (DSS). The legislature does not provide earmarked CHINS budget language but includes CHINS funding in larger service delivery line items, making it difficult, if not impossible, to track the exact amount expended on CHINS youth per year.

#10: The CHINS statute should be amended so that it extends to parents as well as children.

N. Not accomplished. Extending the CHINS statute to include parents as well as children, or even to rename the statute, Families in Need of Services, has been a frequent recommendation. The inclusion of parents raises several questions, none of which have been seriously considered by the legislature in recent years, including: Should parents be subject to contempt orders in CHINS cases? Should parents be subject to jail time for the repetitive CHINS behavior of their child? Can parents be eligible for state-funded legal counsel in cases where custody is not in question?

#11: The "failure to cause" a child to attend school statute should be amended to provide for a substantial monetary penalty.[6]

C. Needs Improvement. The current failure to cause penalty is $20. Legislative action would be required to raise the dollar figure. Governor Cellucci filed legislation (House 4187) in March of 1999 that would "strengthen the school attendance law by increasing the maximum fine for persons failing to make their children go to school from $20 to $100 and by reducing the number of absences necessary before such a fine may be imposed." The Cellucci bill also allowed for fines to be issued and paid by mail. All fine revenue would contribute to offsetting school district truancy-related expenses. The bill authorized Supervisors of Attendance, with approval of the school principal, to direct a truant student to perform "a reasonable term of community service."

The Cellucci bill was heard by the Education, Arts and Humanities Committee in April 1999 and has been held by the House Committee on Rules since July 8, 1999.

#12: A multidisciplinary pilot program should be established at selected elementary schools in addition to early intervention throughout the elementary school level.

C. Needs Improvement. Ten Attendance Review Panels were established in the fall of 1998 to meet with parents of elementary children who had six or more

unexcused absences, per the new attendance policy. However, the review panels were discontinued after geographic boundaries hindered participation by parents, students and staff. The Department plans to launch two neighborhood-based review panels in Roxbury and Mattapan, joining the current neighborhood panel in Dorchester. The effectiveness of Attendance Review Panels have not yet been evaluated.

#13: Top-down management should define truant policies and procedures that are consistent and specific, monitor compliance with them, and develop case protocols for dealing with truants at all levels of the truancy process.

C. Needs Improvement. The new attendance policy issued in 1998 and the School Attendance Improvement Initiative are significant steps toward a unified anti-truancy initiative. However, since the highly regarded Boston Bar Association report, anti-truancy leadership and organizational momentum has lagged.

While the "Boston Strategy to Improve Student Attendance" (START) has developed a strategic plan and established small work groups to operationalize the plan, progress has been limited. According to the Boston School Department, average K-12 daily attendance grew by 1.3% between school year 1997-1998 and school year 1998-1999 but dropped by .1% between the 1998-1999 school year and the 1999-2000 school year.

#14: The School Department should do an annual analysis of the attendance of truants before and after intervention by Supervisors of Attendance and before and after CHINS court intervention.

F. Failure. The Boston Public Schools have not conducted performance evaluation of Supervisors of Attendance as recommended by the Association. Failure to conduct the evaluation questions the wisdom of hiring additional Supervisors of Attendance prior to the receipt of performance results. The Probation Commissioner's report, *In Jeopardy and At Risk*, offers the best analysis of the effectiveness of CHINS court interventions.

Part II.

The Unfinished Agenda

Citizens for Juvenile Justice believes that only through a collaborative effort of schools, court clinics, judges, probation officers, state agency commissioners and staff, the non-profit community, parents, prosecutors, the defense bar and legislators can we improve the immediate future of CHINS youth, deter them from opportunities for delinquency and allow them to lead productive lives as adults.

Collaboration offers the best opportunity for the improvement of a failing system, especially since any remedy by necessity would include, but not be limited to, legislative action. Conversely, disagreement in the juvenile justice community will most likely result in legislative reluctance or worse, inaction.

We believe that while issues of principle remain unaddressed, in essence all parties seek to reduce the number of CHINS youth who are subsequently arraigned, lower the number of committed DYS youth previously served by the Department of Social Services (slightly more than half) and return CHINS youth to the path of productive adulthood.

CHINS youth face a slippery slope, which may result in arraignment and commitment to DYS or incarceration with the Department of Corrections. Of the arraigned CHINS youth in the Probation Commissioner's study, fifty-eight percent (58.2%) faced delinquency charges, twenty-four percent (24.1%) faced both delinquency and adult criminal charges and seventeen percent (17.6%) faced adult criminal charges.

Our challenge is to cease repetitive CHINS behavior while providing treatment and assessment to correct long term family and youth development issues.

As the *CHINS Report Card* indicates, considerable systemic objectives remain unaccomplished, particularly service delivery to CHINS youth. Conversely, neither statute or case law provides a credible consequence for youth who choose to reject offers of assistance or direction from the court and social services agencies.

System accountability and youth accountability represent two distinct schools of thought in CHINS reform. We agree with the Boston Bar Association that effective reform would require some measure of both in combination with parental accountability.

Each commission report also strongly recommended increased early intervention, mediation and diversion programs as key components in any successful CHINS policy. *The agenda items below form a broad outline of the work ahead, little of which can be successful without the early intervention, mediation and diversion efforts endorsed by the reports reviewed above.* In short, the informal services provided to the majority of CHINS youth are both inadequate as a whole and geographically inconsistent.

In *The Unfinished Agenda* we sketch only that broad outline by discussing three fields of accountability in common with all CHINS petitions: 1) youth accountability, 2) system accountability and 3) parental accountability. Lastly, we comment on the Boston Bar Association's report dealing specifically with truancy in the City of Boston.

System Accountability

The *CHINS Report Card* outlines numerous opportunities for system accountability and improvement, including the near unanimous support for increased funding for diversion, early intervention and mediation programs. Again, we agree with the Boston Bar Association's assertion that the inability of the system to provide services

is "not the result of an inherently flawed statutory scheme" but rather "a failure to fund and provide services." We encourage each branch of government and the non-profit community, to review the *CHINS Report Card*, and chart paths toward further accomplishment of the recommendations reviewed and to specifically address the overall issue of service fragmentation and inconsistency.

Further, we caution against the addition of accountability on any party without the required resources for service delivery. As clearly as resources without accountability is unwise public policy, so is accountability without resources.

We feel compelled to comment on three issues of system accountability: data collection, truancy sweeps and resources for service delivery.

Resources for Service Delivery

In discussion with various commission participants, a common criticism of the CHINS statute arises: Who will pay?

All parties involved in CHINS cases bear some measure of responsibility, including all relevant state agencies, schools, the courts and Probation. But no one entity is finally accountable for results or is immediately empowered to enforce service decisions. As noted above, more resources are necessary to provide services. Family mediation and diversion programs should be available to all CHINS youth in every juvenile court jurisdiction.

Currently, the Probation Department is completely dependent on a fragmented and inconsistent array of services voluntarily provided by other state agencies and the non-profit community. Not surprisingly, funding concerns of individual state agencies often serve as the determining and detrimental factor in CHINS service delivery, especially, since CHINS delinquency prevention efforts are not specifically funded, by earmarking or separate budgetary line items in the state's annual budget.

As referenced in the *CHINS Report Card*, the Office of Children, until 1996, held considerable authority to enforce the funding decisions of Interagency Child Service Teams reviewing CHINS cases.

However, Supreme Judicial Court decisions, in part the *Care and Protection of Issac* (419 Mass. 602), established a barrier, the constitutional separation of powers doctrine, to the reestablishment of the OFC authority. Simply, the judicial branch, including Probation, cannot order a specific placement for a CHINS youth within the executive branch, and the executive branch cannot order a specific action by the judicial branch.

Consequently, Citizens for Juvenile Justice recommends separate courses of action for informal probation cases prior to adjudication and cases adjudicated through a trial on the merits.

Citizens for Juvenile Justice recommends that the Juvenile Court Department be funded to hire a CHINS Service Coordinator(s) in every juvenile court district. The CHINS Service Coordinator shall report to the presiding justice of the juvenile court district and be an employee of the Juvenile Court Department. The job of the CHINS Service Coordinator shall be to coordinate CHINS services during the *informal probation* phase and serve as resource for the court, Probation, youth and families. CHINS Service Coordinators shall have full access to the service records of CHINS youth and shall make recommendations to the bench as to the proper course of individual CHINS cases and the effectiveness of overall service provision. Individual CHINS cases, however, will continue to be served and carried by probation officers.

Citizens for Juvenile Justice also recommends that the legislature reconstitute the OFC authority within the Executive Office of Health and Human Services, reporting directly to the Secretary of EOHHS. Specifically, we

recommend staff who are empowered to review, at their discretion, at the request of an EOHHS participating agency or the judge, the service plan and funding components of any CHINS case *adjudicated through a trial on the merits*. CHINS Service Coordinators and EOHHS staff shall facilitate agency cooperation when necessary services are required from both the executive and the judicial branches.

During the review, EOHHS staff could take several actions on behalf of the Secretary, including:

1) Convene the involved parties and develop a service consensus among EOHHS agencies on individual CHINS cases.
2) In the absence of consensus, require the action of an EOHHS agency or other state agency within the executive branch of government.

The Secretary could then promulgate uniform funding and service plan guidelines.

Truancy "Sweeps"

We are disappointed at the misuse of the term truancy "sweep" in the City of Boston and throughout the Commonwealth. Few if any students are ever "caught" and returned to school in the so-called truancy sweeps. The expanded use of police officers to identify, apprehend and return truants is a clear approach to reduce truancy and subsequent delinquency. Of the seven hundred and three (703) students stopped by the City of Boston in the 1998-1999 school year, so few students were ever returned to school that same day that the School Department did not compile data on the numbered returned. Informal estimates place that figure at no more than two dozen.

Yet, truancy sweeps were conducted in every police precinct in the 1999-2000 school year and included Supervisors of Attendance, school police, and police from the participating police precinct. Also participating were officials from Probation and the Boston YMCA. Of this team, only the Supervisor of Attendance has the authority to physically return a student to school.

We encourage and lend our support to Governor Cellucci, Senator Melconian and Representative Honan in their efforts to empower police to return truants to the classroom. However, we warn that simply returning truants to school is only one step in addressing the root cause of the student's truancy. Equally important steps include resources to ease truant youth into appropriate classes during the school day and assuring that all truant youth are quickly assessed and provided with services to address the cause of their truancy.

Data Collection

Prior to the Commissioner of Probation's report *In Jeopardy and At Risk* and the Boston Bar Association's Task Force on Truancy, little if any credible contemporary CHINS data existed in the Commonwealth. The legislature and the judicial branch should financially support the Commissioner of Probation in his effort to track the prior and subsequent delinquency rates of CHINS youth. An update of *In Jeopardy and At Risk* is, of course, a likely next project. Only by factual knowledge, rather than undocumented evidence, can we hope to craft meaningful CHINS policy.

Additionally, we recommend that the Executive Office of Health and Human Services collect and analyze data across the secretariat and work with the Department of Corrections to develop a complete understanding of how CHINS youth progress from the earliest contact with state agencies, to Probation, to DYS and for some, to the most costly, incarceration with the Department of Corrections. Further, EOHHS should investigate the

statistical association between CHINS and undiagnosed learning disabilities, psychological problems, substance abuse and the witnessing of domestic violence.

Youth Accountability

The issue of youth accountability in CHINS cases presents the essential conflict between non-delinquent CHINS behaviors and society's responsibility to provide services to youth who engage in activities against their own self-interest, not against the public at large.

Again, it is important to note the difference between delinquent offenses and CHINS behaviors. To do so we borrow from Justice Roderick Ireland's Massachusetts Practice Volume on Juvenile Law in quoting the New Jersey Supreme Court: "A delinquent is one who is guilty of serious antisocial conduct which, depending on the circumstances, may require detention. On the other hand, a JINS [as CHINS is referred to in New Jersey] is one who has not really committed an offense against society but only against his or her own best interest."

Consequently, the approach and obligation of the Commonwealth in CHINS cases varies considerably from delinquency cases, which by nature assign fault and responsibility to the juvenile.

In the May 1999 Supreme Judicial Court case, *Commonwealth v. Florence F.,* the court found that the judicial branch does not have the judicial power of contempt in CHINS cases, because the plain language of the statute and case law precludes juvenile court judges from issuing orders in CHINS cases, thereby prohibiting the courts from charging a child with contempt of such orders. The court concluded with a plea to the legislature to "address and resolve this well-known and long-standing problem."

The court's suggested remedy is a statutory amendment allowing for valid direct orders in CHINS cases and the subsequent authority to find CHINS youth in contempt and *thus delinquent* for violation of such orders. Importantly, any youth found delinquent is subject to DYS custody until age 18 and in some cases until age 21.

However, before the legislature takes such action, it should be aware of the range of options available and the fundamental erosion which contempt would effect upon the CHINS system. In short, contempt and the authority to enforce contempt, including through commitment to DYS, reverses the original intent of the 1973 enabling statute and violates the spirit of the federal JJDP Act by recriminalizing CHINS behaviors. Consider for instance the life-long consequences of such a policy on a runaway girl who is likely to be a victim of abuse and/or neglect.

Further, placing non-delinquent CHINS youth in DYS secure custody alongside serious delinquent offenders is certain to escalate subsequent delinquency among CHINS youth and aggravate the public safety risk.

We firmly reject the SJC recommendation and other similar recommendations as de facto recriminalization of the CHINS statute in violation of the 1973 state law and the spirit of the 1974 federal JJDP Act.

Some have suggested that civil contempt could be authorized allowing for custody within the Department of Youth Services. However, this approach offers the same recriminalization risk as described in 1987 by the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children. The commission notes that in practice, little difference exists between effective coercive civil contempt and punitive criminal contempt in CHINS cases: "Because the juveniles cannot,

De Facto Recriminalization, How Would it Occur in Practice?

"Linda A. was adjudicated a CHINS and ordered to comply with the court's order. Linda A. subsequently violated that order, was found to be in indirect criminal contempt, and, based on the 'criminal' violation, she was adjudged to be a juvenile delinquent. Now despite the fact that her actions in violation of the court's order - missing school and violating her curfew - would not by themselves support a finding of delinquency, Linda A. is adjudged delinquent and secure detention is an available disposition alternative."[7]

through improved behavior, win their release, this is a criminal - not a civil - sanction." Of particular concern is the indefinite period of time youth may be held in DYS (even up to age 21) without judicial review for the original non-delinquent behavior.

In response to this criticism, another approach suggests DSS civil contempt in which the youth is held in secure confinement by DSS until he affirmatively accepts services issued by the court. While the youth may in fact "win their release," the very nature of CHINS youth suggests that many may not affirmatively accept services under the coercive method proposed and could remain in the custody of DSS indefinitely and without adequate or appropriate services.

The options above hold the risk of incorrectly applying contempt power to a large number of CHINS youth who could be better served by appropriate community-based services. But if the court cannot order contempt, then what ultimate action does it hold as a measure of persuasion in cases where the youth is demonstrating repetitive high-risk CHINS behavior and has repeatedly failed to participate with appropriate and available services?

Youth who continually and repeatedly disobey orders of their parents and the court require immediate intervention to preempt a threat to public safety and protect the youth from further high risk behavior. An infrequently employed section of the current CHINS statute (Chapter 119, Section 39H) does authorize juvenile court judges to remand CHINS youth on bail to the Department of Social Services for not more than 45 days, if they are "likely not to appear at the preliminary inquiry or at the hearing on the merits."

Although, illegal, juvenile court officials have informed us that Section 39H is occasionally employed to stabilize youth who demonstrate repetitive CHINS behavior, regardless of the youth's likelihood to appear.

Therefore, Citizens for Juvenile Justice suggests a similar, but narrowly applied, grant of authority for the purpose of affecting both the persuasive goal intended with contempt and the remedial goal of behavior correction.

Specifically, we recommend a statutory amendment allowing a judge to order a youth to a secure DSS stabilization, assessment and treatment program, if the youth is demonstrating repetitive high-risk CHINS behavior and has repeatedly failed to comply with appropriate and available services. A judge may make such an order, if the Commonwealth proves that appropriate and available services were offered, were not successful and that no reasonable alternative to secure DSS placement exists. The Commonwealth (most likely DSS or Probation) may also petition the court to make such an order.

Keys to the effective expansion of Section 39H are:

- Funding
- A clear legal threshold and process
- Immediate access to youth and family,

stabilization, assessment and treatment

- A definitive time period, with judicial review

Specifically, we recommend the development of 12 new DSS beds, centrally located and accessible across the state, to stabilize CHINS youth, with a maximum five-day stay.

Once stabilized, youth would then be eligible for placement at a new DSS treatment and assessment unit for CHINS youth. A youth's stay at a CHINS assessment and treatment unit should conclude as soon as possible and not exceed 90 days. We recommend a total of fifty CHINS assessment and treatment unit beds, geographically distributed across the state.

Importantly, secure DSS custody with assessment and treatment should only be utilized in a small minority of high-risk cases.

Adoption of this approach negates the risk of recriminalizing CHINS behaviors through the reestablishment of traditional contempt, separates CHINS youth from the delinquent DYS population, offers judges a real and effective tool to discourage CHINS behavior and provides high-risk CHINS youth with the necessary services society is obligated to provide.

But DSS custody also provides a credible threat for the court to hold in all CHINS cases, resulting in the sought after leverage (as requested in the *Florence* decision) to "nudge" reluctant youth and families toward services, if available, through informal probation phase. In fact, informal probation has failed in part because of the lack of services and because some youth are keenly aware that the court holds no true power over their non-delinquent CHINS behavior. However, even without the leverage sought in *Florence,* the Probation Department should amend its 1990 standards of CHINS informal probation to reflect current practice and legal developments. The Department should also investigate options for uniform CHINS practices, including expanded staff training.

Parental Accountability

How can parents be more effective and responsible in CHINS cases? Currently, youth subject to CHINS petitions, even if submitted by a parent, are often placed in an adversarial relationship with their primary caregiver. While no one parental involvement model will ever be suitable for all families, we recommend the following statutory amendments:

- Parents, as well as youth and state agencies, should be included as a legal party to the CHINS petition. As a legal party, parents would have clear legal standing to comment on the case pertaining to their child. While clear legal standing offers a constructive avenue for parental input, it may in some cases increase the adversarial level of the proceedings.
- The judiciary should be authorized to appoint counsel to parents in all CHINS cases. If the parents are indigent, legal counsel shall be appointed at the state's expense.
- Upon a judicial finding of repeated parental rejection of services for parent and child, the court should be granted the authority to apply a meaningful fine for failure to cause a child to attend school. In determining the fine the court shall consider the financial status of the family and the parental effort to assure the child's attendance.
- We recommend a fine based on the criteria above ranging, at judicial discretion, from $20-$250. The current fine, rarely imposed, is $20.

Boston

Boston has made strides toward achievement, mostly immediately preceding or following the release of the Boston Bar Association's report. A new attendance policy has been issued, and a new highly regarded School Attendance Improvement Initiative has been launched. But these efforts are bound to linger without continued executive attention, funding and thorough oversight.

No doubt the size and scope of the city hinder the achievement of these goals. In fact, the School Attendance Improvement Initiative has now focused on a handful of school-specific programs, rather than city-wide reform. But truancy is a city-wide problem.

Only executive leadership from the Office of the Mayor, the Boston School Committee, School Superintendent, community organizations, the business community and the Police Commissioner can effect the necessary change vital to the city's public safety and obligation to provide proper educational services.

Lastly, we praise the Boston Police Department for its participation in the truancy "sweep" initiative. While legislative inaction has hindered the complete success of truancy "sweeps," the participation of the Boston Police Department, in what could be narrowly interpreted by some to be an educational issue, demonstrates the broad thinking and *participation* required to reduce delinquency among CHINS youth.

Conclusion

The CHINS system is failing. Only 46% of CHINS youth are <u>not</u> arraigned within three years. Further, we do not consider the mere fact that a CHINS youth was <u>not</u> arraigned to be a measure of success. Success implies to us well adjusted teenage years leading to a productive adulthood.

The CHINS statute places the ultimate responsibility on adult society to provide the services the court has deemed appropriate. Full assumption of this responsibility, however, is often hindered by short-term fiscal considerations, which cause the government to offer fewer services than required.

Consequently, given the research conducted and the reform recommendations reviewed, we grant the overall ability of the state to prevent delinquency among children in need of services a "C". The rating of "C" connotes: needs improvement, for measurable progress with significant margin for additional achievement.

No population is so clearly poised to benefit from delinquency prevention efforts as CHINS youth.

Yet, while each of the reports reviewed acknowledges the lack of services in the child in need of services system, a common criticism remains that the CHINS statute "has no teeth." The "has no teeth" phrase is so frequently applied that it has become a cliche in the juvenile justice community. However, the description veils the complex nature of CHINS cases, the systemic dearth of services and the failure to hold all parties accountable.

The CHINS statute should offer reasonable opportunities for troubled youth to improve their lives in the near future, divert them from opportunities for delinquency and guide them back toward the path of productive adulthood. Reducing the percent of CHINS youth who are subsequently arraigned to zero may not be possible, but as caring responsible adults, we hold an obligation to do better for our children.

Part III.

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Footnotes

[1] Thirty-one percent (31.6%) had a delinquent arraignment only, thirteen percent (13.1%) had a delinquent and adult criminal arraignment and nine percent (9.6%) had an adult criminal arraignment. Source: Commissioner of Probation, *In Jeopardy and At Risk*, November 1998.

[2] The Court Clinics are overseen by the Juvenile Court Department and receive support services from the Probation Department. However, the Clinics are staffed through contracts between the Department of Mental Health and private vendors.

[3] The reader is encouraged to review the Commission's specific diversion program model described on page 14 of the Commission's final report.

[4] In 1995 and 1999 the legislature passed technical amendments Section 39G of Chapter 119 relative to the authority of the court to direct the Department of Social Services to make specific placements. Chapter 3, Section 14 of the Acts and Resolves of 1999 and Section 138 of Chapter 38 of the Acts and Resolves of 1995. The amended section states:

(c) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, commit the child to the department of social services. At the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. The department shall give due consideration to the recommendations of the court. The department may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C. The department shall direct the type and length of such out-of-home placement. The department shall give due consideration to the requests of the child that the child be placed outside the home of a parent or guardian where there is a history of abuse and neglect in the home by the parent or guardian.

[5] All three bills would amend Chapter 76 of the Massachusetts General Laws by either amending section 20 or adding a new section 20A. The Cellucci bill was House 4188, the Melconian bill was Senate 274. The Committee's bill is Senate Bill 1855.

[6] "Failure to cause" school attendance statute: MGL Chapter 76, Section 2.

[7] Hughey, Maggie. *Holding a Child in Contempt.* 46 Duke Law Review 353. 1996.

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